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Report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru: comments by the State

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the Regional Processing Centre in Nauru.

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Report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru: comments by the State *

Response to recommendations

Australia thanks the Special Rapporteur on the human rights of migrants for providing a draft copy of his report on his visit to Australia (1–18 November 2016). We have reviewed the draft report and make the following suggestions to correct errors of fact or law in the report.

In addition, the Australian Government reiterates that it is not appropriate to prepare one country report in relation to visits to two independent and sovereign nations, Australia and Nauru. Australia's response to the recommendations is limited to responding to matters relating to Australia.

Para. No.	Recommendation	Response
98	In conclusion, the best way of ensuring the legitimacy of laws, policies and practices is to have their conformity to human rights standards assessed by courts and ultimately by the High Court of Australia. Australian authorities should consider the adoption of a constitutional guarantee of human rights, an Australian Bill of Rights, or at least a legislative guarantee of human rights, a Human Rights Act, with a clause of precedence over all other legislation. Such guarantees could be invoked by anyone, citizen or foreigner, whose rights are threatened by a decision of Australian authorities, at any time, before any court of law or tribunal. This would provide better protection for the rights of all, regardless of status.	The Australian Government does not propose to alter its federal model of Parliamentary supremacy by introducing a judicially enforceable human rights act. It considers that existing mechanisms provide for the protection and promotion of human rights.
99	Australia must also develop and implement a human rights-based approach to migration and border management, ensuring that the rights of migrants, including irregular migrants, are always the first consideration.	Human rights are considered in the development of laws relating to migration and border management, under the *Human Rights (Parliamentary Scrutiny) Act 2011*, and policies guiding the exercise of migration and border management powers are drafted consistently with relevant human rights considerations.
100	Ratify the Optional Protocol to the Convention against Torture and establish an independent national preventative mechanism.	On 9 February 2017 the Australian Government announced its intention to ratify OPCAT by December 2017, subject to consultation with states and territories. OPCAT ratification will provide additional, independent monitoring of places of detention, including immigration detention, under Australia's jurisdiction and control by a network of Australian inspectorates (called a National Preventive Mechanism), and the United Nations Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or

* Reproduced as received.

		Degrading Treatment or Punishment. The Commonwealth Ombudsman will be responsible for inspecting immigration detention centres under OPCAT.
101	Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the ILO conventions on Migration for Employment Convention (Revised), 1949 and the Migrant Workers (Supplementary Provisions) Convention, 1975.	Australia already has strong protections in place for migrant workers which are the same protections as afforded to Australians. Australia's treaty-making policy is to only ratify treaties when compliance with domestic law and practice in all jurisdictions can be assured. These Conventions are likely to be incompatible with domestic migration policies, social security and other laws which have a long-standing residency eligibility criteria (linked to Australian citizenship and permanent residency status), with related fiscal impacts. Examples of provisions that raise barriers to compliance with Australian law and practice include the obligations with regard to equality of treatment between immigrants and nationals under Article 6 of Convention 97 and Articles 8 and 10 of Convention 143, which cannot be guaranteed in all circumstances for the government services that are specified in these provisions. The Australian Government addresses the issues covered by the Conventions in a number of ways. Australia recognises the importance of providing legal protections to migrant workers. The human rights of migrants and temporary entrants to Australia are protected under applicable domestic and international law, including the human rights conventions to which Australia is a party. Temporary visa holders with a work right are entitled to the same basic rights and protections as Australian citizens and permanent residents under applicable workplace relations laws. Victims of abusive and fraudulent practices have access to civil mechanisms, such as the Fair Work Ombudsman, and have the ability to pursue civil and administrative remedies, including for unpaid wages and entitlements, irrespective of their nationality. Many minimum workplace relations conditions are provided for under Australian law by the Fair *Work Act 2009* and related Fair Work instruments. The Fair Work Act covers the majority of private sector employees and employers in Australia (further information on coverage is included below). For workplaces covered by the Fair Work Act, the laws apply to Australian citizens, permanent residents and temporary visa holders. (Every worker from overseas must have a valid Australian visa with work rights.) Australia also has a range of measures in place specifically to address instances of exploitation of foreign workers. Australia has in place to manage

		exploitation of migrants. In 2013, Migration Act was amended to allow the department to better address illegal work hire practices. The amendment introduced graduated tiers of sanctions to deter illegal work hire practices and sanction employers and labour suppliers that persist in non-compliant behaviour. The general protections provisions of the Fair Work Act protect employees from discrimination and ensure basic rights such as freedom of association and freedom from discrimination. The protections also apply to prospective employees. Protections and duties specified under workplace health and safety legislation apply to all workplace participants and do not distinguish by citizenship or residency status. The Australian Government is committed to addressing discrimination in Australia. Australian anti-discrimination law targets discrimination on the basis of race, sex, age and disability. Migrant workers are protected by anti-discrimination legislation at the Commonwealth and State/Territory levels of government. Commonwealth anti-discrimination legislation includes the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992* and the *Age Discrimination Act 2004*. These Acts cover direct and indirect discrimination. Anti-discrimination legislation has been enacted at the State and Territory as well as Federal levels of government. This means that in relation to discrimination in the workplace, most employers in Australia are bound by Commonwealth and State/Territory anti-discrimination legislation as well as Commonwealth workplace relations legislation (apart from those employers in some jurisdictions, mostly public sector entities, which continue to be covered by State workplace relations legislation). The Australian Government has a strong commitment to addressing the exploitation of vulnerable workers in Australian workplaces, including migrant workers, and has introduced a number of initiatives to improve compliance with workplace laws. Under the Protecting Vulnerable Workers Policy, the Government has committed to provide additional funding for the Fair Work Ombudsman, establish a Migrant Workers' Taskforce and to amend the *Fair Work Act 2009* to strengthen protections for vulnerable workers. Australia has a comprehensive strategy to combat human trafficking, slavery and slavery-like practices. Australia also works to combat labour exploitation by cooperating with other governments in our region and internationally.
102	Ensure that all Australian legislation, including the	Under the *Human Rights (Parliamentary Scrutiny) Act*

	Migration Act, is fully in line with international human rights standards and the interpretation of those standards provided by international human rights bodies	2011, all new legislation, including amendments to existing legislation such as the Migration Act, must be accompanied by a statement assessing the compatibility of the legislation with the rights and freedoms recognised in the seven core international human rights treaties which Australia has ratified. Australia interprets its treaty obligations in good faith and is guided by the interpretations taken by the competent bodies, noting that the views of those bodies are persuasive rather than binding.
103	Recognize that, at some point, repression of irregular migration is counterproductive, as it drives migrants further underground, thereby empowering smuggling rings, and creating conditions of alienation and marginalization that foster human rights violations, such as exploitation, discrimination and violence against migrants.	Australia's strong border protection policies, and the success of Operation Sovereign Borders in stamping out people smuggling across the region, has enabled the Australia Government to make a generous contribution to global humanitarian resettlement efforts and increase our Humanitarian Programme intake to 16 250 places in 2017–18 and then 18 750 places from 2018–19 ongoing. In addition to Australia's annual Humanitarian Programme intake, Australia is also resettling an additional 12,000 people displaced by the current conflict in Syria and Iraq. The regional composition of Australia's offshore Humanitarian Programme takes into consideration advice on global resettlement needs identified by the UNHCR. Expanding the number of resettlement places available to both refugees and others in humanitarian need provides a safe, orderly and regular pathway to Australia which reduces the need for vulnerable people to engage with the services of criminal people smugglers. To support these efforts, Australia delivers an intensive awareness-raising communication campaign across 13 countries to deter migrants considering illegal maritime travel to Australia. The aim of this campaign is to inform and educate people about Australia's border protection policies as well as highlight the realities of hazardous sea journeys, the financial risks of engaging people smugglers, the deception and lies of people smugglers, and the consequences of illegal migration to Australia by sea.
104	Ensure that readmission and cooperation agreements aimed at, inter alia, combatting irregular migration, include safeguards to fully respect the human rights of migrants as well as ensure adequate protection of vulnerable migrants, including asylum seekers and refugees, in particular regarding the principle of non-refoulement. Such agreements should be negotiated and published in full transparency, with clear human rights guarantees and accountability mechanisms integrated at all stages.	Australia takes its international obligations seriously. The negotiation of agreements and memoranda of understanding with foreign governments for cooperation and for the return of people with no right to remain in Australia ensure that these arrangements are compliant with relevant international obligations. Prior to a person's return from Australia, DIBP ensures that the returnee does not engage Australia's non-refoulement obligations.
105	Direct the DIBP to conduct a review of proposals to give greater weight to time spent living in Australia in consideration of applications for permanent	The Department continually considers ways to improve the visa system, including pathways to permanent residence.

	residency. The review should also consider the merits of setting a limit on the period of temporary residence after which it would be reasonable for any temporary visa holder to qualify for permanent residency.	Australian permanent residence is an important step in a migrant's journey towards becoming an Australian citizen. To attain permanent resident status, an individual must submit an application for a relevant visa and meet all the criteria for that visa. These criteria may include but are not limited to how long an applicant has spent in Australia. It is critically important that Australia continues to maintain the integrity of the Australian migration system. It would not be acceptable to jeopardise the integrity of Australia's migration system by increasing the weighting placed on time spent in Australia to the point that any temporary visa holder would qualify for permanent residency simply as a result of time spent in Australia.
106	(c) urge its laws and policies related to mandatory administrative detention of migrants in an irregular situation and asylum-seekers, so that detention is decided on a case-by-case basis and pursuant to clearly and exhaustively defined criteria in legislation, under which detention is a measure of last resort and limited to the shortest time possible, rather than being the automatic consequence of a decision to refuse admission of entry or a removal order;	Immigration detention is an important part of strong border control and supports Australia's migration system. It assists in managing potential risks to the Australian community – including national security, health and character risks – and ensures people are available for removal. A person who does not hold a valid visa must be detained under the Migration Act, however whether the person is placed in an immigration detention facility is determined using a risk-based approach. In Australia, immigration detention is administrative not punitive and assists the Department to manage its temporary entry and permanent migration programmes. Detention in immigration detention centres is used as a last resort and for the shortest possible time. Generally, those of low risk are able to have their immigration status resolved in the Australian community through the grant of a bridging visa. High risk unlawful non-citizens remain subject to detention in immigration detention facilities as necessary. The safety of the Australian community is important. The decision to place an individual who does not hold a valid visa into an immigration detention facility includes consideration of whether or not they present a risk to the Australian community.
107	(d) ensure that migrants are detained only because there is reasonable evidence that they present a danger to the public, or would abscond from future proceedings;	The Migration Act imposes a duty on officers to detain a person they know, or reasonably suspect, is an unlawful non-citizen. Where a person is taken into immigration detention they cannot be released until they are granted a visa or removed from Australia. Placement in an immigration detention facility is based on an assessment of the person's risk to the community. Community-based options may be used if the individual does not present unacceptable risks to the community. Individuals may be required to comply with various conditions while remaining in the community until a substantive immigration status outcome has been reached and/or they leave the

		country. Detention Review Committees are held monthly to review all cases in held detention to ensure the ongoing lawfulness and reasonableness of the initial decision to detain a person, by taking into account all the circumstances of the case, including adherence to legal obligations. This periodic review takes into account any changes in the client's circumstances that may impact on immigration pathways including returns and removal, to ensure the continued lawfulness of detention and ensures alternative placement options have been duly considered.
108	[illegible]	Placement in an immigration detention facility will be based on an assessment of the person's risk to the community. Community-based options may be used if the individual does not present unacceptable risks to the community. Individuals may be required to comply with various conditions while remaining in the community until a substantive immigration status outcome has been reached and/or they leave the country. Detention Review Committees are held monthly to review all cases in held detention to ensure the ongoing lawfulness and reasonableness of the initial decision to detain a person, by taking into account all the circumstances of the case, including adherence to legal obligations. This periodic review takes into account any changes in the client's circumstances that may impact on immigration pathways including returns and removal, to ensure the continued lawfulness of detention and ensures alternative placement options have been duly considered.
109	[illegible]	Under the Immigration Detention Facilities and Detainee Services Contract, the Detention Service Provider (Serco) must provide detainees with access to a variety of nutritious food and beverages that are sufficient in quantity, culturally appropriate, dietary specific (where required) and the preparation of which is compliant with all applicable food and health safety legislation. Upon reception, Serco provides detainees with clothing and footwear that is new, suited to the local conditions and their cultural background. Serco is responsible for replenishing a detainee's clothing and footwear as required. Serco is responsible for all cleaning services of the facilities on a regular basis and must ensure the safety and welfare of detainees, and all other people at the facility. To support a detainee to maintain their own personal hygiene, Serco allocate each detainee a starter pack of toiletries during the reception process. These supplies are replenished as needed. A number of programmes for detainees in immigration detention are run within, and external to, the immigration detention facilities and contribute to

		personal development and quality of life. These include activities such as cultural and lifestyle classes, sporting activities, educational services, including health and wellbeing, English language instruction, vocational, religious and instructive programmes or activities. Resources and equipment for self-education and recreation available at immigration detention facilities include computers, appropriate videos, art and craft supplies, sport and recreational facilities and equipment and amenities including a library with a variety of reading material in various languages. Quiet places for passive activities such as reading and contemplation are also available. IHMS provide integrated health care to detainees that includes health promotion, education and prevention programmes, nurse consultations, General Practitioner consultations, mental health services, medication supply and administration, dental services, optical services, complex and chronic disease management, women's health, diabetes support, child health services, referral to specialists as required and a 24 hours Health Advice Service via telephone.
110	Systematically inform detained migrants in writing, in a language they understand, of the reason for their detention, its duration, their right to have access to a lawyer, their right to promptly challenge their detention and their right to seek asylum;	On arrival at an IDF, detainees are informed as part of the induction process that they may seek legal advice. In addition, detainees are advised that they may receive visits from their legal representative and contact their legal representative electronically, by telephone and to send and receive correspondence electronically or via post. The Department informs detained migrants of the reason for their detention in a language they understand. In regional processing countries, the host government provides this service (supported by DIBP's capacity building activities.) General information in detention centres, such as induction processes, request forms and complaints forms are in different languages.
111	Ensure that all detained migrants are able to promptly contact their family, consular services and legal counsel;	The guiding principles for all detainees in relation to access to communication services in immigration detention facilities (IDFs) state that detainees will be treated fairly and reasonably within the law and that conditions of immigration detention will ensure the inherent dignity of the human person. For the provision of communication services in IDFs this means that detainees: are encouraged to maintain reasonable contact with their family, friends and community contacts; • are entitled to communicate with external scrutiny bodies including the Australian Human Rights Commission and the Commonwealth Ombudsman's Office; • will be informed during induction about accessing the telephone, facsimile, mail and photocopying services;

		• will be afforded the same level of privacy when communicating externally as they would have in the community. Neither the facilities and detainee services provider (FDSP) nor the Department may record, intercept, read, copy or otherwise listen to a detainee's communication without their explicit invitation. It is a legislative requirement of the *Australian Human Rights Commission Act 1986* that detainees can correspond with the Commission without their correspondence being opened; • will be given reasonable access to communication services unless it presents a serious safety or security concern; and • will have explained to them, in a language in which they are reasonably fluent, arrangements for access to all communication services, using an interpreter and translated documents where necessary. Australia is a party to the Vienna Convention on Consular Relations 1963 (the VCCR). Article 36 of the VCCR creates obligations for Australia to ensure that foreign consular officers have access to their nationals who are in immigration detention in Australia. Consistent with these obligations, at the time of their detention, all detainees are informed of their right to: • request consular access at any time; • receive consular access without delay; • refuse consular access at any time; and • change their decision on consular access at any time. On arrival at an IDF, detainees are informed as part of the induction process that they may seek legal advice. In addition, detainees are advised that they may receive visits from their legal representative and contact their legal representative electronically, by telephone and to send and receive correspondence electronically or via post. Detainees in IDFs can: • make personal telephone calls on communal telephones. Local and interstate calls can be made at no cost. International and calls to mobile phones are made at the detainee's own cost using phone cards; • purchase phone cards of varying denominations from the FDSP operated facility shop or canteen; • receive and send faxes irrespective of the destination, place of origin or time differences at no cost to themselves; • photocopy documents free of charge; • access computers and the internet, including email, subject to agreeing to 'Terms and Conditions of Computer and Internet Use'. Due to privacy requirements detainees do not receive

		incoming calls directly, but messages are passed on to Detainees with the callers details. There is also no limit on the number of letters that a detainee can receive or send at their own expense. Writing paper, envelopes and stamps are available for purchase through the facility shop. There are no restrictions placed around visiting third parties taking receipt of items to be mailed on behalf of detainees when they have been requested to do so. Restrictions to some communication services may apply to detainees held in border screening detention.
112	Develop comprehensive human rights training programmes for all staff who work in such centres; including to provide them with the ability to identify detainees exhibiting mental health problems.	The Detention Service Provider (Serco) has developed induction training for its staff, which includes training on human rights, cultural awareness, mental health awareness, abuse and trauma awareness, interacting with detainees and working with minors. Serco requires its staff to undertake the mental health awareness training prior to commencing work and undertake refresher courses on a regular basis. This training must cover identifying and responding to threatened, attempted and actual self-harm. In addition, Serco has procedures in place to identify and manage detainees who may be at risk of self-harm.
113	Improve available mental health services in detention, based on the principle of informed consent;	Mental health services to detainees in immigration detention are provided by a mental health team comprising of a mix of mental health professionals appropriate to the mental health needs of each facility. The mix is of this team may vary depending on the age group and gender mix at each facility.
114	Provide on-site interpreters in immigration detention facilities, at least for frequently spoken languages, so as to render health services and other services more accessible and appropriate for detainees lacking English language skills;	Interpreters are available onsite or by phone when required.
115	Adopt all necessary measures to ensure that stateless persons whose asylum claims are refused and refugees with adverse security or character assessments are not held in detention indefinitely, including by resorting to non-custodial alternatives to detention.	While stateless persons who present character or security risks may be detained, most stateless persons whose protection applications have been refused are able to live in the Australian community on a bridging visa or in community detention arrangements while their status is resolved either through departure from Australia or grant of a different visa. It should be noted that under s195A and s197AB of the Migration Act the Minister has the power to intervene in such cases. This power is non-compellable. Australia is a party to the UN Convention on relating to the Status of Stateless Persons and where a detainee has their identity confirmed as stateless, the Department would assess their case against the s195A guidelines. The length and conditions of detention, including the appropriateness of both the accommodation and the services provided are subject to regular review. In line with these values, placement in an immigration detention facility will be based on an assessment of the

		person's risk to the community. If the individual does not present unacceptable risks to the community, community-based options may be used. Individuals may be required to comply with various conditions while remaining in the community until a substantive immigration status outcome has been reached and/or they leave the country. Detention Review Committees are held monthly to review all cases in held detention to ensure the ongoing lawfulness and reasonableness of the initial decision to detain a person, by taking into account all the circumstances of the case, including adherence to legal obligations. This periodic review takes into account any changes in the client's circumstances that may impact on immigration pathways including returns and removal, to ensure the continued lawfulness of detention and ensures alternative placement options have been duly considered.
116	Quickly close down the RPCs in PNG and Nauru and terminate the offshore processing policy, in order to remedy the systemic human rights violations this policy creates.	The PNG and Australian Governments have made clear their commitment to closing the Manus RPC. The Government of PNG has indicated a preference for this to occur by 31 October 2017 and the Australian Government continues to support this objective. Decommissioning of the site commenced in December 2016 and will continue in line with residents moving from the RPC. Australia will continue to support a regional processing capacity in Nauru. It is a priority for all three Governments to secure appropriate and durable outcomes for all people in regional processing countries.
117	Immediately repatriate all children and families with children from RPCs to mainland Australia and place them in communities with appropriate child and family psychiatric care and appropriate support for their integration in the school and social systems.	It is Australian Government policy that no illegal maritime arrival will permanently settle in Australia and that all arrivals are subject to regional processing arrangements, including children and their families, single women and unaccompanied minors. Australia supports the Governments of Nauru and PNG to secure durable outcomes for all people subject to regional processing arrangements. The education of children in Nauru is the responsibility of the Government of Nauru; however, the Department is committed to supporting the delivery of quality education programmes. The Australian Government provides professional development to Government of Nauru teachers to assist with curriculum development, improvements to pedagogical practice and the implementation of the national quality school's standards framework. Mental health care and support is provided to transferees and refugees in Nauru by the Department's contracted health services provider (HSP), through a multi-disciplinary service, including general practitioners, mental health nurses, psychologists,

		occupational therapists, social workers and counsellors and visiting psychiatrists. Survivors or torture and trauma are referred to specialist torture and trauma counsellors. The Department has implemented an enhanced mental health strategy in Nauru to improve the provision of mental health services to transferees and refugees. The Strategy is based on a community mental health framework, which includes the establishment of a child, adolescent and family mental health team, as well as a community-based mental health team. Assertive mental health outreach is also provided by the HSP's mental health team at the Regional Processing Centre, with activities including: • mindfulness walking group, during which HSP practitioners observe social interactions and behaviours of residents; • education sessions; • joining select groups of residents during meal times at the RPCs, making observations through social interaction; • attending events at the request of residents, to enable interactions; and • participating in compound walk-throughs where residents may request time with HSP staff member or look to engage with the HSP staff through social interaction.
118	Find meaningful and timely resettlement options for all refugees in RPCs, while respecting the right to family unity. Any agreement regarding third. country resettlement must be meaningful in terms of numbers, timeliness and opportunities to rebuild one's life, taking into account particularly vulnerable migrants, and respect Australia's international humanitarian and human rights obligations. Refugees and migrants who cannot be quickly resettled in a foreign country must be repatriated without delay on Australian territory.	Since the Special Rapporteur's visit to Nauru, the Australian Prime Minister and Minister for Immigration and Border Protection have announced a resettlement option to the United States. Under the arrangement, the US is considering cases referred to its Refugee Admissions Program by the United Nations High Commissioner for Refugees. The priority is the resettlement of the most vulnerable refugees, with an initial focus on women, children and families. The orderly resettlement of refugees from regional processing countries will take time. Resettlement in the US is just one options for refugees in Nauru and PNG. Refugees can temporarily settle in Nauru for 20 years or permanently resettle in Cambodia. Refugees in PNG can settle permanently in PNG. Australia will continue discussions with other countries to expand options for the resettlement of refugees from regional processing countries.
119	Ensure the independent and systematic monitoring of all detention centres by independent and competent oversight mechanisms, so that they are all brought to the same standards. In order to foster accountability for human rights abuses, their reports should be immediately made available to the public.	Australian immigration detention centres have independent and competent oversight mechanisms in place, including the Commonwealth Ombudsman, the Australian Human Rights Commission (AHRC), the Australian Red Cross (ARC), the Australian National Audit Office (ANAO) and Comcare. The Commonwealth Ombudsman investigates

		complaints relating to the administrative processes of the Department, and as well matters of concern it identifies through its interaction with the Department. The AHRC is an independent statutory authority that investigates, conciliates and resolves alleged discrimination and breaches of human rights. The Department enjoys a robust, honest and healthy relationship with the AHRC. The ARC acts as humanitarian observers, monitoring the conditions of detention and the treatment of people within the detention network. The ANAO performs a vital oversight function for the government, providing assurance that government Departments and agencies are performing within legislative and policy boundaries. Comcare also provides external scrutiny of the Department's compliance with the *Work Health and Safety Act 2011* including s 19(1), which requires the Department to ensure, as far as is reasonably practicable, the health and safety of its employees. The Department values its relationships with these agencies as they allow the Department to continuously improve. Within the Department, the Detention Assurance Branch provides internal, independent review of detention-related matters. On 9 February 2017, the Government announced it will work towards ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) by December 2017. OPCAT ratification will provide additional, independent monitoring of places of detention, including immigration detention, under Australia's jurisdiction and control by a network of Australian inspectorates (called a National Preventive Mechanism), and the United Nations Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Commonwealth Ombudsman will be responsible for inspecting immigration detention centres under OPCAT. Australia's ratification of OPCAT will not apply to regional processing countries.
120	Ensure that reports of abuse in RPCs are properly investigated by an independent and competent oversight mechanism, and that persons found guilty held accountable.	Papua New Guinea and Nauru have both signed MOUs with Australia and, relevantly, provided their respective assurances that people taken to their jurisdictions by Australia will be treated with dignity and respect and in accordance with relevant human rights standards. While it is the responsibly of the Governments of PNG and Nauru to ensure access to justice and accountability, the Department also takes incident reporting and management in Regional Processing Centres very seriously. Matters involving alleged

		criminality are referred to Nauruan or Papua New Guinea law enforcement agencies for investigation as appropriate. First response to reported incidents in a RPC is the responsibility of contracted service providers. Service providers are required to manage incidents in accordance with contract standards, which vary based on the seriousness of the incident. Health and welfare supports are available to all alleged victims.
121	Allow the AHRC to inquire at will in offshore RPCs on the actions of Australian authorities and of service providers.	The Australian Government has not sought to prevent the Australian Human Rights Commission (AHRC) from commencing any inquiry into the actions of Australian authorities and of service providers. The AHRC is an independent body established by statute. The AHRC's governing statute does not provide for the AHRC to exercise its powers outside of Australia. The AHRC has publicly stated that it will inquire into complaints received from asylum seekers on Nauru and Papua New Guinea.
122	Ensure full and proper access to justice for all detainees, including a more accountable system for lodging complaints within detention centres.	Migrants, asylum seekers and refugees are able to access a range of private and community legal services. Consistent with the Migration Act, the Department provides detainees reasonable facilities for obtaining legal advice or representation either through private or pro bono legal services. The Australian Government also funds application assistance for the most vulnerable asylum seekers, and provides online application assistance through the Protection Application Information and Guides (PAIG), which are available in a range of community languages. Detainees are informed of their rights and are able to comment on or complain without hindrance or fear of reprisal about any matter relating to the conditions of detention to the service provider, its personnel and/or subcontractors, the Department, the Australian Human Rights Commission or the Commonwealth and Ombudsman. Material advising of the right to complain to the Australian Human Rights Commission and the Commonwealth Ombudsman is displayed prominently throughout detention facilities at all times and is also available to detainees on request.
123	Ensure that all detained persons who claim protection concerns are, without delay, adequately informed of their right to seek asylum, have access to registration of asylum claims and can communicate with UNHCR, lawyers and CSOs.	Under section 256 of the Migration Act, where a person is in immigration detention, the person responsible for his or her immigration detention shall, at the request of the person in immigration detention, give to him or her application forms for a visa or afford to him or her all reasonable facilities for making a statutory declaration for the purposes of this Act or for obtaining legal advice or taking legal proceedings in relation to his or her immigration detention. Detainees have access to landline telephones, mail and computers linked to the internet.
124	Ensure that migrants, asylum seekers and refugees,	Migrants, asylum seekers and refugees are able to

	whatever their status, have easy access to competent lawyers, free of charge when needed, in order to challenge any decision made that threatens their rights and freedoms, especially in expulsion, detention and asylum procedures.	access a range of private and community legal services. Consistent with the Migration Act, the Department provides detainees reasonable facilities for obtaining legal advice or representation either through private or pro bono legal services. The Australian Government also funds application assistance for the most vulnerable asylum seekers, and provides online application assistance through the Protection Application Information and Guides (PAIG), which are available in a range of community languages.
125	Simplify and encourage easy access of CSOs to detention centres in order to reinforce the information migrants need to make appropriate choices regarding their legal options.	Civil society organisations can access immigration detention facilities through the existing visits process, which is accessible on the DIBP website.
126	Ensure the detention appeal proceedings allow for a regular review of the merits of the detention, and not only its legality.	Detention Review Managers ensure the lawfulness and reasonableness of detention by reviewing detention decisions. The review is conducted to ensure the decision to detain is lawful focusing on identity issues, knowledge or reasonable suspicion that the person is an unlawful non-citizen. In addition, Detention Review Committees are held monthly to review all cases in held detention to ensure the ongoing lawfulness and reasonableness of the decision to detain a person, by taking into account all the circumstances of the case, including adherence to legal obligations. This periodic review takes into account any changes in the client's circumstances that may impact on immigration pathways including returns and removal, to ensure the continued lawfulness of detention and ensures alternative placement options have been duly considered. Part of ongoing review of individuals in detention includes a risk-based approach to the consideration of the appropriate placement and management of an individual while their status is being resolved. Placement in an immigration detention facility will be based on the assessment of a person's risk to the community and level of engagement in the status resolution process. If the individual does not present unacceptable risks to the community, community-based options may be used. Individuals may be required to comply with various conditions while remaining in the community until a substantive immigration status outcome has been reached and/or they leave the country. Immigration detention in an immigration detention centre will continue to be available for those who pose a risk to safety and security of the Australian community.
127	Provide access to basic services such as healthcare to everyone living in the Australia, regardless of their immigration status, in accordance with international human rights standards.	Australia's Multicultural Access and Equity Policy focuses on ensuring that Australian Government programs and services meet the needs of all Australians, regardless of their cultural and linguistic background. Humanitarian entrants settled in Australia

		are permanent residents and as such have access to Medicare and income support benefits as any other Australian citizen or permanent resident. HSS service providers are contracted by DSS to provide early practical support to refugees and humanitarian entrants to help them settle into the Australian community. The types of settlement services provided to refugees and humanitarian entrants generally include arrival reception and assistance, assistance with finding accommodation (short and long term), property induction; assistance to register with Centrelink, Medicare, health services, banks and schools, orientation to life in Australia, and linking with community and recreation programs. Access to the Australian universal health insurance scheme (Medicare) is governed by the *Health Insurance Act 1973*. Eligibility to Medicare is generally restricted to people who permanently reside in Australia and are Australian citizens, New Zealand citizens or permanent visa holders. However, the Government also provides access to Medicare for asylum seekers and refugees who hold specific temporary visas. Refugees and asylum seekers who are eligible for Medicare have access to the full range of medical services subsidised by Medicare. Applicants for permanent resident visas, who hold a bridging visa, are also entitled to access Medicare if they have either: a) a parent, spouse or child who is an Australian citizen or holder of a permanent visa; or b) authority to work. It is submitted that the above entitlements accord with the right to the enjoyment of the highest attainable standard of physical and mental health contained in Article 12(1) of the International Covenant on Economic Social and Cultural Rights (ICESCR). The UN Committee on Economic Social and Cultural Rights has stated that the right to health is not a right for each individual to be healthy, but is a right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health. The Committee reports that the 'highest attainable standard of health takes into account the country's available resources. The Pharmaceutical Benefits Scheme (PBS) provides timely, reliable and affordable access to necessary medicines for Australians. The PBS is available to all Australian residents who hold a current Medicare card. Overseas visitors from countries with which Australia has a Reciprocal Health Care Agreement are also eligible to access the Scheme.
128	Implement "firewalls" between public services and immigration enforcement, thus offering better access	Exchange of information between government agencies is required to ensure that clients receive entitlements in

	to effective labour inspection, access to justice, and to other public services such as housing, healthcare, education, police and social services, for all migrants, regardless of status, without fear of detection, detention and deportation. This would also allow for better collection of disaggregated data by government agencies, especially on undocumented migrants.	accordance with government policy and program settings. With regard to labour inspection, implementation of a "firewall" between the Fair Work Ombudsman (FWO) and the Department of Immigration and Border Protection would be inconsistent with agreed protocols for information sharing between the two agencies. The agencies work collaboratively by sharing information, referring relevant matters and undertaking joint activities. For example, under Taskforce Cadena, the FWO and DIBP share intelligence and data to identify strategic targets with regard to contraventions of the *Fair Work Act 2009* and the Migration Act. This collaboration enhances the ability of both agencies to target and disrupt entities that seek to commit visa fraud and exploit foreign workers in Australia. On 4 October 2016, the Government announced the establishment of a cross-government Migrant Workers Taskforce to identify options for improvements in law, law enforcement and investigation, or other practical measures to more quickly identify and rectify cases of migrant worker exploitation. The FWO and the DIBP are members of the Taskforce. In October 2016, to support and encourage migrant workers to report workplace issues, the Taskforce announced that where temporary visa holders with a work entitlement attached to their visa may have been exploited (and provided they have reported their circumstances to the FWO), the DIBP will generally not cancel a visa, detain or remove those individuals from Australia.
129	Ensure respect by all service providers in on-shore and offshore detention facilities of the 2011 Guiding Principles on Business and Human Rights adopted by the Human Rights Council, which underscore as one of their foundational principles the corporate responsibility of business enterprises to respect human rights.	Detention services contracts generally stipulate that service providers must comply with all legislation of the Commonwealth or State or Territory in force, including the *Migration Act 1958*; *Human Rights and Equal Opportunity Commission Act 1986* and *Australian Human Rights Commission Act 1986*. The Detention Service Provider (Serco) must comply with, and ensure that all personnel comply with all laws including, but not limited to, those laws listed in the contract and any other government policies as notified by the Department of Immigration and Border Protection. The service provider must also comply with all of Australia's obligations under any international treaties, charters, covenants and agreements including: • International Covenant on Civil and Political Rights; • Convention Relating to the Status of Refugees; and • Convention on the Rights of the Child. Serco ensure that the detainee induction briefing includes all information relevant to detention, including how to access information from the Australian Human Rights Commission, the Commonwealth Ombudsman,

		the International Organisation for Migration and other international and regulatory bodies. Detainees are informed of their rights and are able to comment on or complain without hindrance or fear of reprisal about any matter relating to the conditions of detention to the service provider, its personnel and/or subcontractors, the Department, the Australian Human Rights Commission or the Commonwealth and Ombudsman. Material advising of the right to complain to the Australian Human Rights Commission and the Commonwealth and Ombudsman is displayed prominently throughout detention facilities at all times and is also available to detainees on request. The Department will endeavour to make its contractors aware of the UN's Guiding Principles.
130	Ensure an effective enforcement of laws prohibiting racist and xenophobic acts as well as hate speech and racially motivated violence against migrants and asylum seekers. Ensure that such acts are prosecuted and punished and that appropriate compensation is awarded to the victims.	It is important that Australia strikes the right balance between laws which protect social harmony and mutual respect, and the fundamental democratic value of freedom of speech. Australia's federal and state and territory anti-discrimination laws provide the legal frameworks to protect people from racial discrimination.
131	Strengthen the efforts to apply the legislation to combat direct or indirect discrimination with regard to the enjoyment of economic, social and cultural rights by migrants, refugees and asylum-seekers, including in access to private rental housing and the labour market.	The *Racial Discrimination Act 1975* plays an important role in protecting individuals from discrimination on the grounds of race, colour, descent or national or ethnic origin in any field of public life. Australia's *National Anti-Racism Strategy*, national Harmony Day and new multicultural statement *Multicultural Australia: united, strong, successful* all support Australia's *Racial Discrimination Act 1975*.